

To: Kivowitz, Sharon[Kivowitz.Sharon@epa.gov]
Cc: Doyle, James[Doyle.James@epa.gov]
From: Lieber, Thomas
Sent: Thur 2/25/2016 7:07:19 PM
Subject: RE: weekly report

FYI, Paul shortened the weekly item:

Court Decision regarding New Cassel/Hicksville Groundwater Contamination Site. On February 9, 2016, the U.S. District Court for the Eastern District of New York decided several motions that had been filed in the CERCLA cost recovery action brought by the State of New York concerning the New Cassel/Hicksville Groundwater Contamination Site. The Site was included on the NPL after the State's attempts to obtain the PRPs' agreement to implement a remedy failed. In its decision the court found the following: 1) the defendants are liable parties in this action under Section 107(a) of CERCLA; 2) the defendants are liable for the costs incurred by the State in connection with the site remedies selected by the state; 3) the State's costs are consistent with the National Contingency Plan; 4) the State's suit for natural resource damages is not time-barred; and 5) the defendants are liable for natural resource damages. However the court found that there is a triable issue of fact on whether there is divisibility of harm allowing for a reasonable basis for apportionment, and set a trial date for April 11, 2016, on this issue alone. The decision is helpful to EPA in that it determined liability for these PRPs. The impact of any future decision on divisibility will be assessed by EPA at that time. EPA issued a Record of Decision for the first operable unit at the Site on September 30, 2013 and is currently seeking an agreement from these and other PRPs to perform the remedial design of the remedy. (Contact: Sharon Kivowitz, 212-637-3183)

From: Kivowitz, Sharon
Sent: Thursday, February 25, 2016 10:43 AM
To: Lieber, Thomas <Lieber.Thomas@epa.gov>
Subject: RE: weekly report

From: Kivowitz, Sharon
Sent: Thursday, February 25, 2016 10:17 AM
To: Lieber, Thomas <Lieber.Thomas@epa.gov>
Subject: weekly report

See my changes in red. Let's talk. This is not my best writing but I think this starts to get very complicated and I don't know how to simplify in a sentence or two.

Weekly Report on State of New York vs. Next Millennium Realty, LLC, et.al,

On February 9, 2016, the District Court for the Eastern District of New York decided several motions filed in the above-mentioned New York State cost recovery case. This case relates to EPA's New Cassel/Hicksville Groundwater Contamination Site ("Site"), a Site included on the NPL after New York's attempts to obtain agreement from the PRPs to implement a State remedy failed. The State's remedy addresses an area of groundwater contamination south of the New Cassel Industrial Area, an area from which the contamination emanates. The State's remedy addresses the same area as EPA's OU1. EPA issued its OU1 ROD on September 30, 2013 and is currently seeking an agreement from these same PRPs, and others, to perform the remedial design of EPA's OU1 remedy selected in that ROD.

In its decision the Court found the following: 1) that the defendants are liable parties in this action under Section 107(a) of CERCLA; 2) that the defendants are liable for the State's costs associated with the State's remedies (which includes EPA's OU1); 3) that the State's costs are consistent with the National Contingency Plan; 4) that the State's suit for natural resource damages is not time-barred; and 5) that the defendants are liable for natural resource damages. However the court found that there is a triable issue of fact on whether there is divisibility of harm allowing for a reasonable basis for apportionment, and set a trial date for April 11th on this issue alone. The decision is helpful to EPA in that it determined liability for these PRPs but note that these PRPs are only a subset of the PRPs at the Site. The impact of any future decision on divisibility will be assessed by EPA at that time. Note that New York State previously settled with other PRPs at the Site.

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